

THE QUEEN'S BENCH

Winnipeg Centre

BETWEEN:

Vanessa Routley

applicant,

- and -

Minister of Education and Training

respondent,

AFFIDAVIT OF VANESSA ROUTLEY

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Introduction

I, Vanessa Routley, of the City of Winnipeg in the Province of Manitoba, **MAKE OATH**
AND SAY:

1. I am a licensed Manitoba lawyer and I am also the applicant in this matter, and as such have personal knowledge of the facts and matters hereinafter deposed by me save and except where same are stated to be based upon information and belief, in which case I

verily believe them to be true. I have prepared this affidavit in support of my application for judicial review for declaratory relief. I have tried to follow the conventions of the Court to prepare this affidavit but I am not an experienced litigator and I have never conducted a case in Court.

2. I make this application to the Court because my ability to practice law and represent clients is diminished by the absence of published rules and statistics which should fall under the purview of the Manitoba Provincial Nominee Program (“the Nominee Program”). I prepared this affidavit because I am seeking a declaration of the Court that the current practices of the Nominee Program are unfair and unjust.

Business Investor Stream (BIS)

3. The Nominee Program previously operated an immigration application stream known as “PNP-B” for many years. This was an immigration application stream for high net worth immigrants. Immigrants, including my past clients, were given Permanent Residency status in exchange for posting a bond deposit of \$100,000 CAD with the Province of Manitoba, and committing to open a small business.

4. Under the old PNP-B Nomination Program rules, the applicant would deposit \$100,000 in funds with the Nominee Program. If the immigrant opened a small business in Manitoba, their deposit funds would be refunded. (Exhibit A)
5. In November 25, 2016 I read that Brian Pallister made an announcement that the PNP-B investor application stream would close and would be re-established with different rules (Exhibit B). I do not know what exact date this program stated and the Nominee Program refuses to disclose this information.
6. The PNP-B ended and was replaced with a new program called the Business Investor Stream (“BIS”). Under this program, applicants must invest \$150,000 to \$200,000 in a Manitoba small business. Their application for a “Nomination” which leads to Permanent Residence is decided 2 years after the funds are invested.
7. This program operates on a competitive basis, and applicants are scored, ranked, and selected based on their personal characteristics and proposed investment. To my knowledge there is no published information about the range of scores currently required to qualify under this program. This issue about the lack of public information for this program forms the main basis for my Application.

8. To my knowledge there is no information about which scores have been selected over the past year. Without this information I cannot advise clients on whether traveling to Manitoba and submitting an Expression of Interest will produce a meritorious or competitive score.
9. To my knowledge there is no public information about the number of Business Investor Stream applicants who have been successful in obtaining Work Permits and moving to Manitoba under this program. In my experience it is highly unusual for any immigration program to hide the number of visas granted under any specific application stream.
10. On January 30, 2019, I prepared a Request for Access to Information Under Part 2 of The Freedom of Information and Protection of Privacy Act, which was assigned file No. 2019 - E 040 (Exhibit C). I prepared this Request to get some visibility into what profile of applicant was successful under the new BIS stream.
11. My request for information included 40 questions which would help me determine if my clients had any chance of success under the new BIS program. My request for

information also included asking for basic information, such as what date the BIS program started.

12. In response to my Request for Access to Information, the Nominee Program refused to answer any of the 40 questions. They would not answer even the most basic questions, such as what date their BIS program started (Exhibit D). The Nominee Program stated that they would release some of the information I had requested later, through their website.
13. The Nominee Program did release some information on their website. The information that was released initially gave me the erroneous impression that at least some applicants have been successful in receiving a Nomination through the BIS investment program. (Exhibit E)
14. I noticed the information on the government website was footnoted to indicate these approval statistics include a mix of applications under the previous MPNP-B Business Immigration category nominations (direct-to-permanent model), and also under the new BIS stream.

15. The Nominee Program had thus not answered the most important questions in my request: how many people have been approved under this program? What scores do they need to be approved? What percentage of the hundreds of people who had travelled to Manitoba to do a Research Visit were ultimately awarded a work permit?
16. I have not been able to locate any evidence that any applicant has ever received a Nomination under the new BIS program. I also have not been able to find any evidence of any applicant reaching step 1 of the BIS process, namely receiving a work permit.
17. I do not know if I should tell my clients to apply because the Government of Manitoba will not truthfully or transparently disclose the information I have requested. My clients seeking to patron this program want to know their prospects of success before undertaking a costly application process. The cost to assemble an application can reach the tens of thousands of dollars before the application is even submitted.
18. According to the Nominee Program's website, over 211 people have attended Winnipeg Information Sessions for the new BIS program stream so far in 2019.(Exhibit F). There are no statistics for how many attended in 2018.

19. Attendees of the Winnipeg Information Sessions for the new BIS program are required to travel from their home country overseas for the purpose of conducting a required “Business Research Visit”, and to attend the BIS Information Seminar.
20. In my experience, it is typical for the BIS candidates to travel to Canada with their spouse and children, so everyone can visit the Province of Manitoba in anticipation of moving here. The reported 211 seminar attendees reported on the Nominee Program website (Exhibit G) represents only a portion of people who have travelled to Winnipeg in the hopes of applying under the BIS program in 2019.
21. Without information on what score is required to qualify, I cannot estimate how many of these hopeful participants had any chance of qualifying, and who made the trip in vain.
22. My experience representing clients informs me that a primary criteria for formulating a successful PNP-B application was the “Business Research Visit”.

23. When I arranged Business Research Visits in 2016, the average cost I quoted for travel to Manitoba for a family of 4 departing from the Middle East was \$10,000 - \$15,000 Canadian dollars. These are very expensive trips for the immigrants to make.
24. In the absence of any published statistics, is possible that hundreds of families are wasting a significant sum of money coming to Manitoba as a precondition to applying for the BIS program, when they have no prospect of achieving a qualifying score.
25. Up until October 2017, under the old PNP-B investor program rules, I was able to advise my clients on their likelihood of success under the PNP-B stream. The PNP-B had a practice of publishing the qualifying scores for selected applicants (Exhibit H).
26. The ability to determine my client's likelihood of achieving a qualifying score is a critical part of advising immigrants on their immigration strategy. The ability to determine if my client is likely to get a qualifying score informs my advice to them about coming to Manitoba for an BIS research visit. I cannot advise clients on this immigration program if the statistics are not published.

27. Every other investor immigration program in Canada tells participants what the required score is to qualify and be successful in obtaining a nomination. (Exhibit I)

International Student Working Graduates

28. The International Student Working Graduates application stream under the Nominee Program facilitates a Nomination for Permanent Residency for students who graduate in Manitoba and find work in the local economy. (Exhibit J)
29. The “paper-based” nomination to PR process takes a minimum of 15 months for the federal stage of Permanent Residency processing. (Exhibit K)
30. There is no published guidance for these International Student Working Graduates about what happens if they are fired or resign from their Manitoba employer. (Exhibit L) This is critical information which many of my clients ask me for.
31. I have several International Student Working Graduate clients who describe their employment arrangements as abusive to me. These clients and patrons of the Nominee Program tell me they are afraid to leave their jobs.

32. The Nominee Program has not published any information about whether or not the Permanent Residency application will be cancelled if the worker is fired or resigns their employer for another job in Manitoba. I cannot give legal advice to my clients because the Nominee Program will not publish a complete set of rules and directions.
33. This immigration stream does not require an English test from all applicants. The online program guidance does not make it clear that candidates under this program do not require the English score.

Truck Drivers, and Strategic Recruitment

Employers in the Trucking Industry

34. I have several clients who own transportation companies (trucking companies) in Manitoba. I have observed a number of irregularities in how the Nominee Program is dealing with the trucking industry and truck drivers. In late August 2019 I received three new clients with retainer payments totaling over \$35,000. These new retainers were in respect for three trucking companies who had hired me to assist with applying for Strategic Recruitment (Provincial Nominee) positions for truck drivers.

35. I commenced work on these matters immediately after being retained. As of September 20, 2019, I had performed approximately \$15,000 of work-hours on these files. I had also billed clients for advertising fees to post their job ads.
36. On September 20, 2019 I was confronted by one of my clients, a trucking company owner. He accused me of taking their cases when the Nominee Program was closed to trucking companies. My client then forwarded me an email, sent from the official Nominee Program email address (Exhibit M).
37. My client had received this email second-hand from someone else in the trucking industry. My clients told me neither he nor his associates are willing to be identified. They tell me they fear reprisals from the Nominee Program, and that their ability to hire foreign workers will be further compromised.
38. The email was a notice from the Nominee Program that all truck driver recruitment was to be paused until further notice. The date of the notice was Wednesday September 11, 2019. (Exhibit M).

39. There was no mention of this change published in public. The general public had no earthly way of knowing this government program had been changed.
40. The Provincial Manitoba licensing rules for truck drivers changed earlier in the month of September 2019. The Nominee Program used the change in licensing rules as a pretext to suspend this program. Foreign drivers continue to be eligible to be licensed under the new licensing process. The new licensing process requires drivers to attend mandatory entry level training.
41. The new training requirements is no justification for closing the employer direct recruitment stream. My clients tell me all existing truck driver training programs in Manitoba qualify under the new requirements. I cannot understand why employer direct recruitment was paused for trucking companies.
42. On September 26 2019 I called the Nominee Program employee, Ntumba Kabongo, who had sent out the notice, using the contact details in the signature line. I asked if the “program pause for drivers” had been announced publicly. I was told that there was no public notice that the program was paused.

43. I have been asked by my clients to refund the fees for the work in progress for these matters. I will likely have to take a loss of many thousands of dollars for billable work which cannot be charged to clients. The program was not functioning when the work was performed. Some lawyers and employers were made aware of this policy change but I was not.
44. This situation would not have happened if the Nominee Program had given all information to all stakeholders at the same time.
45. The email from Ntumba Kabongo indicated another change to be implemented for employers using this application stream in the future. The email stated that “Recruitment efforts [should] maximize global exposure by targeting various source countries”. I do not understand why the Nominee Program would require that transportation companies should recruit from various source countries.
46. My clients in the trucking industry are small business owners. They typically own between 5 and 20 trucks. My clients tell me it is already expensive to recruit overseas from *one* source country. My clients, employers in the Manitoba trucking and transportation industry, are mostly East Indian. We are all concerned that the new

“multiple source country” recruitment rule is a form of covert racism designed to stop recruitment from countries the Nominee Program considers undesirable.

47. Recent recruitment missions by the Nominee Program have been to London, Paris, Brussels, and Manilla. When the Nominee Program organizes overseas recruitment missions, they have always been to countries with predominantly caucasian populations. I cannot find any history of the Nominee Program doing recruitment in Africa or the Middle East. (Exhibit O)

Truck Driver Work Permit Holders

48. I have observed the Nominee Program is not only obstructing employers from hiring foreign worker truck drivers. I have observed the Nominee Program is also obstructing my work permit holder clients who seek to enter the trucking industry from using the Nominee Program to obtain Permanent Residence.

49. The Nominee Program has created a list of “Occupations In-Demand”. This list is used to determine which foreign workers and international student graduates are eligible to apply after 6 months of work experience in Manitoba. (Exhibit P)

50. Truck Drivers are not on the In-Demand list for the Nominee Program. Based on my research, the In-Demand list has no basis in the job market realities of Manitoba.
51. There are currently 160 employers advertising on the Canada Job Bank for Truck Drivers in Manitoba (Exhibit R) . Some of these employers are seeking 20 or more drivers. There are hundreds of jobs for truck drivers currently open in Manitoba.
52. The Occupation Outlook for Truck Drivers on the Canada Job Bank Outlook Report states “The employment outlook will be fair for Transport truck drivers (NOC 7511) in Manitoba for the 2018-2020 period.” (Exhibit T)
53. Included on the In-demand list is “Railway and Rail Yard Locomotive engineers” (exhibit U). There are currently 0 (zero) jobs advertised on the Job Bank in this occupation. The Occupational Outlook for Railway and Rail Yard Locomotive engineers states “The employment outlook will be limited for Railway and yard locomotive engineers (NOC 7361) in Manitoba for the 2018-2020 period.”

54. I cannot find any factual or statistical basis for the jobs that are considered In Demand by the Nominee Program.
55. On September 3rd 2019, I did some research into the Nominee Program for the purpose of understanding how the program is run and who is in charge of policy. I learned that there is an Advisory Council on Citizenship, Immigration and Multiculturalism which is established under the authority of an Act under the Manitoba Legislature, *The Manitoba Advisory Council on Citizenship, Immigration and Multiculturalism Act*. (exhibit V)
56. According to the Mandate published by Manitoba Sport, Culture and Heritage, “The purpose of the Act is to establish a Council consisting of Manitobans who will provide information, advice and recommendations to the Manitoba Government, through the Minister of Sport, Culture and Heritage (the Minister)...” .
57. The press release of October 15, 2015 introducing the new Council members stated “*This new council will continue the good work of its predecessors by providing timely expertise and feedback to government as we work together to increase immigration to Manitoba to meet labour market needs*”. (Exhibit X)

58. In reviewing the Members of this Advisory Council, I noticed the name Garth Pitzel.

The internet posting makes it clear Mr. Pitzel was a founding member of the Nominee Program Advisory Council. That was in 2015 but appointments only last 3 years.

59. When I googled Garth Pitzel's name, I discovered he is an executive with Bison

Transportation, and has been with that company for the past 20 years. My further

internet research showed that Bison Transportation has ads currently running (as of 26

September 2019) stating the company has positions available to sponsor foreign

workers under the Nominee Program. (Exhibit Y)

60. I do not know when Garth Pitzel's appointment to the Nominee Program Advisory

Council ended, or if someone else from his company has replaced him on the Council.

I could find no published information anywhere public about who is presently on the

Council.

61. I discussed this possible conflict of interest with my transportation company clients. I

discussed my concern around the issue of having the largest trucking company in the

Province with their executive on the advisory Council of the Provincial Nominee Program, at the same us being excluded from the foreign worker hiring process.

62. I showed my clients the public advertisements that Bison is currently running for Nominee Program positions, despite the program “pause” .

63. My clients tell me that profit margins are razor thin in the transportation industry and nobody can compete with Bison. My clients tell me that they lost revenue over the past year with trucks parked and no drivers. My clients tell me they and their associates may need to accept subcontract work for Bison and driven their trucks themselves to avoid having trucks parked losing money for want of drivers.

Conclusion

64. Based on the program rules, the Nominee Program has the exclusive discretion to issue a Nomination when their officers see fit.

65. The Nominee Program does not have an appeal or reconsideration process.

66. Based on my research of court cases, there has never been a successful appeal against a decision from the Nominee Program.

67. I have prepared this affidavit in support of my Application for a declaration be issued declaring that the Respondent has acted with procedural unfairness and that the Respondent breached the principles of natural justice in the design and implementation of its application process for every stream under the Manitoba Provincial Nominee Program.

I MAKE THIS AFFIDAVIT BONA FIDE AND IN SUPPORT OF MY NOTICE OF MOTION/ APPLICATION.

Sworn (or Affirmed) before me at the

_____ of _____

in the Province of Manitoba,

this ____ day of _____, _____

Signature of Deponent

Deputy Registrar for Queen's Bench or
A Commissioner for Oaths in and for
The Province of Manitoba

My Commission expires: _____